Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
	)	
Application by Ameritech Michigan	)	
Pursuant to Section 271 of the	)	CC Docket No. 97-1
Telecommunications Act of 1996 to	)	
Provide In-Region, InterLATA	)	
Services in Michigan	)	

MOTION TO DISMISS BY THE ASSOCIATION FOR LOCAL TELECOMMUNICATIONS SERVICES

Pursuant to Rule 1.727(a) of the Commission's Rules of Practice, the Association for Local Telecommunications Services ("ALTS") hereby moves the Commission for an order dismissing Ameritech's Section 271 application for the state of Michigan because the application on its face shows Ameritech has not complied with the clear requirements of the statute.[1]

SUMMARY

Perhaps the most contentious issue among many that arose during the debate and adoption of the Telecommunications Act of 1996 ("1996 Act") was the determination of the conditions under which the Regional Bell Operating Companies ("RBOCS") would be permitted to enter into long distance services within their

[1] Rule 1.727(a) addresses motions in the analogous context of formal complaint proceedings. The Commission has not issued rules of procedure applicable to Section 271 applications. See pp. 5-8, infra.

respective regions. This dispute arose out of the same policy concern that ultimately forced AT&T to divest its local operations from its long distance operations thirteen years ago in the Modification of Final Judgment ("MFJ") -- the problem of permitting local incumbents to enter long distance markets given their control of "bottleneck facilities."

The RBOCs insisted to Congress that changes in technology and regulatory supervision since the adoption of the MFJ had eliminated any need for a continued prohibition on long distance entry by the RBOCs, and urged that they be permitted to enter long-distance service on a "date certain" following passage of the Act. The long distance industry contended the RBOCs' continued control of bottleneck local facilities posed a fundamental risk to competition, and concluded they should be subject to the same requirements as were applied under the MFJ. And new entrants in the competitive access and local telecommunications services industry emphasized that interLATA entry was the only incentive that could help assure that RBOCs would actually implement the interconnection arrangements needed for effective local competition.

Congress settled this dispute by creating a detailed blueprint in Section 271 of the 1996 Act that governs RBOC in-region long distance entry, and specifies requirements that insure successful implementation of local competition. Congress required that the RBOCs do more than just execute Section 251

interconnection agreements. Section 271 compliance requires that an RBOC's Section 251 agreements must be with competitors serving both business and residence customers predominantly over their own facilities (these are known as "Track A" agreements).[2] Next, those agreements must be operational as to each of fourteen "competitive checklist" items specified by Congress. Finally, the Commission -- in coordination with DOJ and the applicable state agency -- must evaluate the RBOC's compliance with Track A, must confirm that each checklist items is "fully operational" via the Track A agreements, must ascertain the RBOC's compliance with certain safeguards contained in Section 272, and, finally, must determine whether the application is in the public interest.

Ameritech's Section 271 application is facially defective for at least five independent reasons:

- Ameritech has not implemented unbundled switching as required by the statute (Section 271(c)(2)(B)(vi)). The Commission has no power to relieve Ameritech of this clear obligation, nor has Ameritech demonstrated any factual basis that would justify such a waiver if the Commission did have the power to grant waivers of Track A checklist implementation.

- The prices in the interconnection agreements submitted by Ameritech have not been verified by the MPSC as complying with the costing rules of the 1996 Act. Until such prices are ultimately determined by the MPSC, Ameritech has no way to assure the Commission that those prices will be fully consistent with the pro-competitive requirements of Section 271.

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[2] There is also a "Track B" mechanism if no new entrant has sought interconnection by December 8, 1996 (Section 271(c)(1)(B)). Ameritech does not claim that Track B applies to the present application.

- Ameritech is defying an order of the Michigan Public Service Commission ("MPSC") that requires Ameritech to provide 100% intraLATA dialing parity in Michigan. The public interest requirement of Section 271 precludes Ameritech from even filing a Section 271 application until it comes into compliance with a clearly pro-competitive state agency order.

- Ameritech seeks to "mix-and-match" various agreements in showing that it meets the competitive checklist for its Track A agreements because its existing agreements contain "most favored nation" clauses entitling those parties to request any provisions in the other agreements. What Ameritech fails to address, however, is that future potential entrants have no guarantee that individual checklist-compliant items will be available to them.

- Ameritech makes the remarkable claim that the unbundled loops and other network elements that a new entrant obtains from an RBOC be treated as a new entrant's "own" facilities in determining whether the new entrant is providing service "predominately over its own facilities" -- a misreading that would undercut one of the core requirements of Track A.

* * *

In order to properly focus this motion to dismiss, ALTS is raising only the five facial defects set forth above. However, the Commission should recognize there are several other significant defects in Ameritech's application not addressed here. For example, Track A requires that competitors serve residence customers as well as business customers, but residence customers currently have competitive choices only in a few Michigan communities in and around Grand Rapids. None of the 10 million people living in metropolitan Detroit -- the largest city in Michigan and the fifth largest city in America -- are currently able to order competitive residential service. Similarly, for example, Ameritech's Section 272 safeguards and

its OSS "availability" are mere promises, not completed arrangements. But it serves little purpose here to list exhaustively all of Ameritech's failures to comply with Section 271. Each of the defects noted above, described in greater detail below, is a sufficient and independent basis for the entry of an order by the Commission dismissing Ameritech's application for failure to show compliance with Section 271.

ARGUMENT

The Commission clearly has the authority to grant a motion to dismiss Ameritech's application for failure to state a facial claim of compliance with Section 271. There is no reason why commenters or the Commission need address the thousands of pages which make up Ameritech's application when it fails to state even a colorable claim for permission to enter in-region long distance service in Michigan. A brief examination of the obligations set out in Section 271 of the Telecommunications Act of 1996 ("1996 Act") will make this clear.

First, an RBOC seeking in-region permission must enter into interconnection agreements with local competitors serving both residential and business customers "predominantly over their own facilities" (§ 271(c)(1)(A); these are referred to as "Track A" agreements). If no interconnection agreements have been requested by December 8, 1996 (or if the potential competitors bargain in bad faith or fail to comply with their interconnection agreement), an RBOC can file a Statement of Generally Available

Terms ("SGAT") under § 271(c)(1)(B) (this approach is referred to as "Track B").

The signing of Track A agreements with local competitors marks just the beginning of the Section 271 approval process. Next, an RBOC must show that its Track A agreements fully discharge the highly-specific requirements contained in the "competitive checklist" (§ 271(c)(2)(B)). The competitive checklist functions just like the checklist carried out before any flight on a commercial airplane: unless all the checklist items are properly completed, the plane does not take off (or in this case, the RBOC does not receive its permission to enter in-region long distance service).

Furthermore, checklist compliance must be real and ongoing, rather than just hypothetical (see the Conference Committee's explanation of Section 271(c)(2)(B)): "The requirement that the BOC is 'providing access and interconnection' means that the competitor has implemented the interconnection request and the competitor is operational;" (H.R. Rep. No. 104-458, 104th Cong., 2d Sess. 145 (1996); emphasis supplied).

After Track A agreements have been signed and the RBOC has fully implemented those agreements consistent with the competitive checklist, the RBOC submits its application for in-region authority to the Commission (Section 271(d)(1)). The Commission has ninety days to act on the application after consulting with the Department of Justice and the applicable

state commission (Section 271(d)(2)). DOJ is free to evaluate the application "using any standard the Attorney General considers appropriate," and the Commission gives substantial weight to that analysis, but not "preclusive effect" (Section 271(d)(2)(A)).

In considering an application, the Commission must: determine whether the RBOC has executed Track A agreements (§ 271(d)(3)(A)); assure itself that all the items on the competitive checklist have "been fully implemented" in the RBOC's Track A agreements (Section 272(d)(3)(A)(i)); conclude the RBOC has complied with the safeguards contained in Section 272 (§ 271(d)(3)(B)); and determine whether the application is "consistent with the public interest, convenience, and necessity" (Section 271(d)(3)(C)).

Section 271 thus requires an applicant to carry its burden of proof concerning a wide range of highly specific factual and legal issues. While the Commission has not issued procedural rules to govern its procedural handling of Section 271 applications,[3] such a proceeding clearly resembles both formal complaint proceedings (Rules §§ 1.720-1.735), and applications involving common carriers (Rules §§ 1.741-1.749).

[3] The Commission issued certain ministerial requirements for processing Section 271 applications in Procedures for Bell Operating Company Applications Under New Section 271 of the Communications Act, Public Notice, FCC 96-469 (released December 6, 1996).

Nowhere in the Commission's existing rules dealing with these particular kinds of proceedings does it expressly address motions to dismiss, yet the Commission on numerous occasions has treated them as a fundamental procedural tool (see, e.g., In the Matter of International Telecharge, 11 FCC Rcd 10061, 10078 (1996)("We conclude, therefore, that ITI has met its burden under Sections 1.271(a) and 1.728(a) of the Commission's rules. Accordingly, we deny the defendants' motions to dismiss the complaints"); In the Matter of Long Distance/USA, Inc., 7 FCC Rcd 408, 411 n. 42 (1992) ("Ameritech and Contel filed motions to stay discovery pending disposition of their motions dismiss the complaints"); In the Matter of Policy and Rules Concerning Rates for Dominant Carriers, 6 FCC Rcd 2637, 2734 n. 292 (1991)("To address MCI's request for clarification, we would advise complainants that there is no purpose to their including invalid causes of action in a complaint, but if they do so dismissal of that cause of action will not automatically require dismissal of all other causes of actions in the same complaint").

The motion to dismiss remedy is as fully applicable to Ameritech's Section 271 application as in these analogous situations. The burden of proof clearly falls on Ameritech concerning its Section 271 application both to plead and show compliance with each of the applicable statutory requirements. Given that Ameritech is unable to plead compliance as to several significant matters, a motion to dismiss is plainly appropriate.

I. AMERITECH HAS TOTALLY FAILED TO IMPLEMENT UNBUNDLED SWITCHING AS REQUIRED BY THE COMPETITIVE CHECKLIST.

One requirement in the competitive checklist is that the interconnection being provisioned must include "Local switching unbundled from transport, local loop transmission, or other services" (Section 271(c)(2)(A)(vi)). The Commission implemented unbundled switching requirements in Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, CC Docket No. 96-98, released August 8, 1996 ("Local Competition").

Ameritech readily concedes that it is not providing unbundled local switching (Brief at 32). According to Ameritech, it "currently is prepared to furnish unbundled switching if and when such an order [from a competitor] is made" (id.). Ameritech argues that checklist items need only be "truly available," rather than actually being provided. According to its view, "a BOC satisfies Section 271(c)(2)(B)'s requirement that it 'provide' the checklist items when its agreements with qualifying carriers make those items available upon order by the carriers, not when those carriers actually decide to take them" (Brief at 17; emphasis supplied).[4]

But this is not what the statute says. Section

[4] Ameritech also argues that requiring Track A implementation for all checklist items would permit competitors to block its long distance entry by conspiring not to order an item. But most ALTS members have no economic interest in whether Ameritech enters long distance, so Ameritech's "conspiracy" argument cannot explain why ALTS' members are not actually receiving a particular checklist item.

271(c)(2)(A)()(I) expressly states that Track A agreements only meet competitive checklist requirements if: "such company is providing access and interconnection ...." Ameritech simply ignores this language in its brief, and instead quotes the Conference Report as asserting the checklist is a minimum standard "'assuming the other party or parties to that agreement have requested the items included in the checklist.' H.R. Rep. Nol 104-458, 104th Cong. 2d Sess. 144 (1996)(emphasis added)" (Ameritech Brief at 18).

However, the quote relied upon by Ameritech is not the Conference Committee's discussion of its provision, but rather only its description of the Senate Bill. In the portion of the legislative history describing the legislation actually passed, the Conference Committee clearly rejects Ameritech's stance: "The requirement that the BOC is 'providing access and interconnection' means that the competitor has implemented the interconnection request and the competitor is operational;" (H.R. Rep. No. 104-458, 104th Cong., 2d Sess. 145 (1996); emphasis supplied). Thus, Track A compliance requires full, operational implementation for each checklist item, a requirement the Commission has no power to waive.[5]

The "operational" requirement for Track A checklist

[5] See Section 271(d)(4), entitled "LIMITATION ON COMMISSION": "The Commission may not, by rule or otherwise, limit or extend the terms used in the competitive checklist set forth in subsection (c)(2)(B)."

compliance is more than a technical subtlety. It provides a far more reliable means for validating checklist compliance that a mere "providing" or "available on order" provision could ever achieve (see the various contentions at the MPSC that some checklist items such as unbundled switching or OSS are not currently implemented because of inadequate definitions contained in the "offering," or because of uncertainty as to pricing, rather than an absence of any need for the item; e.g., Motion for Summary Dispostion in MPSC Case No. U-11104 filed October 11, 1996, at 4 (included in Volume 4.1 of Ameritech's current application)).

Furthermore, there are yet other important implications here. Even if the Commission did have the power to allow Ameritech to substitute an offer to provide a checklist item for full implementation (a claim which is plainly incorrect for all the reasons given above), such a determination would have to be based on a comprehensive record which fully captured the current status of unbundled switching. Only in this manner could the Commission assure itself that the failure to request an item was not the result of RBOC manipulation or some transient factor, and thus be able to conclude that Congress (as well as the Commission, Ameritech, and virtually every other party to the recently completed Local Competition docket) had simply been wrong when they concluded that the actual provisioning of unbundled switching is necessary to the successful development of local competition.

Nowhere in the several thousand pages of its application does Ameritech attempt any such showing. Quite the contrary, Ameritech was enthusiastic in urging the Commission to require unbundled local switching just eight months ago in the Local Competition proceeding (CC Docket No. 96-98, Ameritech Comments filed May 16, 1996, at 43):

> "Ameritech agrees that unbundled local switching can be included as a core network element. The legislative history of the 1996 Act cites local switching as an example of a network element, and item (vi) of the competitive checklist requires that BOCs offer "[l]ocal switching unbundled from transport, local loop transmission, or other services.' Ameritech submits that local switching thus satisfies the statutory test that defines the parameter of the section 251(c)(3) obligation." (Emphasis supplied.)

Ameritech admits in its current application that it cannot explain the absence of unbundled switching implementation. See Affiant Dunny (at ¶ 89): "This may be the result of the ready availability of switching equipment or of a 'mix and match' entry strategy by new entrants to begin competing by combining unbundled network elements with the own switching equipment. In addition, new entrants may prefer to provide their own switching as a means of avoiding access charges by providing exchange access service to itself" (emphasis supplied).

Ameritech's admission that the current self-provisioning of switches by competitors may be only a short run phenomenon that will end with access charge reform is important. It demonstrates that current non-implementation may be only a timing issue, and

that unbundled switching may still prove to be an essential network element as envisioned by Congress in Section 271, and by the Commission and Ameritech in the Local Competition proceeding. Yet if Ameritech were to receive a waiver of its Track A implementation obligation as to unbundled switching, and thereby obtain Section 271 authority in Michigan, it would no longer have the same incentive to deliver on its "IOU" concerning unbundled switching once new entrants do need that item. The motivation and validation contemplated by Congress in requiring that Track A checklist implementation be "operational" will have been gutted for unbundled switching.

Furthermore, Ameritech's reliance here on the "available on order" provisions in its current agreements to show Track A checklist compliance would fail to achieve even the modest effect of Track B, if that mechanism were being invoked by Ameritech. Under an SGAT (the "Statement of Generally Available Terms" mechanism used for Track B compliance) provisions would be available to all future new entrants. In the present application, the "available on order" mechanism could only be invoked by the signatory and those few other carriers that have "most favored nations" clauses in their agreements.[6]

And if the Commission were to allow Ameritech to substitute

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[6] See also Part IV infra concerning Ameritech's claim that any checklist items missing from Track A agreements are available from the AT&T agreement pursuant to Section 252(i).

promises for provisioning concerning unbundled switching, how would the Commission be stop this process for any of the other checklist elements? The incentives Section 271 was intended to present the RBOCs would quickly evaporate once the RBOCs were free to quit worrying about actually providing interconnection, and could simply lodge "IOUs" throughout their Section 251 agreements and receive their in-region long distance permission anyway.

And this is where the true audacity of Ameritech's position becomes clear. Once the Commission permits promises to substitute for Track A compliance, Ameritech will have totally obviated the Track A conditions that were a central pillar of the Conference Committee's approach. If Ameritech persuades the Commission that any pauses in the implementation of a checklist item are a sufficient basis for dispensing with Track A compliance, it will have effectively smuggled the "date certain" concept for RBOC entry back into the 1996 Act after it was rejected in both houses.

The Commission should deny so dramatic a rewriting of Section 271 by dismissing Ameritech's application.

II. AMERITECH'S TRACK A AGREEMENTS DO NOT CONTAIN PRICES WHICH COMPLY WITH THE 1996 ACT.

The absence of prices which have received final approval pursuant to the cost provisions of the 1996 Act in any of the Section 251 agreements Ameritech relies upon here is a lethal

defect. Unfortunately, neither the Commission nor potential competitors have any assurance -- given the Eighth Circuit's stay of the Commission's pro-competitive pricing rules -- that the costing principles ultimately employed by the MPSC will actually foster economically efficient local competition.[7]

It is manifest that the Commission adopted its pricing principles with the goal of encouraging rapid implementation of effective local competition. Local Competition (¶ 114):

> "We believe that national rules should reduce the parties' uncertainty about the outcome that may be reached by different states in their respective regulatory proceedings, which will reduce regulatory burdens for all parties including small incumbent LEC and small entities ... Failure to adopt national pricing rules, on the other hand, could lead to widely disparate state policies that could delay the consummation of interconnection arrangements and otherwise hinder the development of local competition. Lack of national rules could also provide opportunities for incumbent LECs to inhibit or delay the interconnection efforts of new competitors, and create great uncertainty for the industry, capital markets, regulators, and courts as to what pricing policies would be pursued by each of the individual states, frustrating the potential entrants' ability to raise capital. In sum, we believe that the pricing of interconnection, unbundled elements, resale, and

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[7] In the Matter, on the Commission's own motion, to consider the total service long run incremental costs and to determine the prices of unbundled network elements, interconnection services, resold services, and basic local exchange services for Ameritech Michigan, Case Nos. U-11280, U-11281, and U-11224, at 3: "The Commission finds that it is appropriate to conduct a comprehensive review for each company to consider their TSLRIC studies and to determine the prices of unbundled network elements, interconnection services, resold services, and basic local exchange services."

The requirement in Michigan state law that prices set by the MPSC reflect TSLRIC costs (MSA 22.1469(352)) has been replaced with a requirement that such prices need only be just and reasonable effective January 1, 1997.

transport and termination of telecommunications is important to ensure that opportunities to compete are available to new entrants." (Emphasis supplied.)

Ameritech recognized the force of this argument by opposing the Eighth Circuit's issuance of a stay (see Ameritech's September 24, 1996, Opposition to Stay at 2): "A stay, and the resulting absence of effective interconnection rules, might encourage the Commission to deny Ameritech and other incumbent local telephone companies the opportunity to enter the market for long distance service within their local service areas." While Ameritech contended any such action would be unwarranted, its opposition to the stay effectively acknowledges that the nonapplicability of the Commission's costing rules is a fatal flaw to its current application.

III. AMERITECH HAS FAILED TO PROVIDE INTRALATA DIALING PARITY AS REQUIRED BY THE MICHIGAN PUBLIC SERVICE COMMISSION.

A glaring defect in Ameritech's application is its repeated disregard for outstanding orders of the MPSC that require it to implement intraLATA dialing parity in Michigan. In order to fully appreciate Ameritech's efforts to preserve its approximately $50 million a month intraLATA toll market in Michigan, it is necessary to set out the chronology of this dispute:

02-02-1994	**MPSC orders intraLATA dialing parity**
08-17-1994	**Ameritech appeals MPSC order**
01-20-1995	**MPSC orders implementation**

04-07-1995	**Ameritech appeals implementation order**
09-09-1995	**Ameritech-sponsored legislation is introduced to eliminate dialing parity obligations prior to receipt of interLATA authority**
11-30-1995	**Legislation modified to delay dialing parity obligation by four months**
01-01-1996	**Ameritech converts 10% of switches**
01-02-1996	**Michigan court denies first Ameritech appeal**
05-02-1996	**IXCs move to compel dialing parity**
06-26-1996	**MPSC grants IXC motion, Ameritech ordered to provide full dialing parity**
07-09-1996	**Ameritech petitions for reconsideration**
10-07-1996	**MPSC denies Ameritech's petition for reconsideration**
10-18-1996	**Federal District Court declines to stay MPSC order**
11-20-1996	**Michigan court orders Ameritech to comply**
11-22-1996	**Ameritech appeals to Michigan appellate court**
12-04-1996	**Michigan appellate court grants stay pending consideration of Ameritech's appeal**

Other events underscore this sad history of anticompetitive behavior. In December of 1995, just before the opening of intraLATA competition -- as least, just before the MPSC thought it would be opened -- Ameritech unveiled a new service offering to its millions of Michigan customers. Under the guise of "helping" customers avoid unauthorized changes in long distance carriers (known as "slamming in the long distance industry), Ameritech offered to "freeze" current long distance carriers for its customers. This mechanism would have the effect of

preventing any changes in intraLATA carriers as well, even though slamming was not even possible for intraLATA services when the insert describing this service went out.

The MPSC found conclusive evidence that the insert was "deceptive and misleading" (In the Matter of the Complaint of Sprint Communications Company, L.P. against Ameritech Michigan, Case No. U-11038, decided August 1, 1996, at 6-7):

> 'The Commission finds the bill insert to be deceptive and misleading. Just a few months before sending the bill insert, Ameritech Michigan had provided notice of the impending implementation of intraLATA dialing parity and used the terminology 'intraLATA toll calling.' Exhibit I-24, p.2. Ameritech conducted a media campaign a few weeks after mailing the bill insert to encourage those who had not done so already to request PIC protection. It did not use the phrase 'long-distance' service as the bill insert had used that phrase. It referred to 'long-distance and/or local-toll service.' Exhibit I-43, pp. 4-7. Yet, in the bill insert, Ameritech Michigan used the term 'long-distance' to mean inter- and intraLATA services.
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> "In addition, the bill insert is misleading because it states that 'Ameritech can do nothing to resolve the problem after your long distance service has been slammed.' As Ameritech Michigan admits in its brief, '[t]he only remedy that can be provided by Ameritech once a customer has been slammed is to switch the customer back to his or her chosen carrier.' To a customer who has been slammed, being switched back to his or her chosen carrier is hardly 'nothing ... [B]y falsely implying that the customer would be stuck with the carrier that slammed his or her account, Ameritech Michigan sought to create a sense of urgency to enroll in PIC protection just as intraLATA dialing parity was about to be offered to some customers.'"

The plan to send the bill insert to 12 million Ameritech customers was developed by Ameritech's Product Manager, IntraLATA Toll, whose responsibilities include retaining Ameritech's intraLATA market share (id. at 9).

Nor has Ameritech been content with just fighting orders to implement dialing parity and "freezing" intraLATA carrier selections. On October 30, 1996, AT&T filed a complaint with the MPSC claiming that the quality of Ameritech's access service has deteriorated over the last two years. According to AT&T and MCI, long distance carriers suffer lengthy delays in provisioning new services, and incur unreasonable service outages (Case No. U-11240).

This barrage of anti-competitive behavior was breezily dismissed in a document Ameritech recently filed with the MPSC, its "Compliance Filing and Request for Approval of Plan on IntraLATA Toll Dialing Parity" dated November 26, 1996 (a time when Ameritech was in defiance of MPSC and state court orders). Keeping its eye firmly on its current $50 million per month of intraLATA toll revenues while still hoping to justify entry into the interLATA business in Michigan, Ameritech brazenly attempted to "plea bargain" away its non-compliance by offering to implement 70% of dialing parity by the time it filed a Section 271 application, and the remaining 30% within 10 days of receipt of its Section 271 permission.

This history receives barely a mention in Ameritech's current Section 271 application for Michigan. Buried in footnote 27 to its brief is the statement that:

> "Although intraLATA toll dialing parity is not a checklist item, as of the date of this filing Ameritech Michigan has

> implemented intraLATA toll dialing parity in exchanges representing 70 percent of its access lines. The remaining exchanges and access lines will be activated at least 10 days prior to the provision of in-region interLATA service in Michigan by Ameritech. Mayer Aff., ¶¶ 270-277."[8]

The ultimate issue here, of course, is not whether any part of Section 271 requires an RBOC to implement intraLATA dialing parity in the absence of any state requirement (a matter on which ALTS takes no position here). Rather, the question is whether an RBOC's Section 271 application could possibly meet the public interest test of Section 271(d)(3)(C) when the RBOC admits it is still disregarding state agency orders which are deemed critical to successful competition. The answer should be no.

IV. AMERITECH CANNOT "MIX-AND-MATCH" PORTIONS OF TRACK A AGREEMENTS IN DEMONSTRATING CHECKLIST COMPLIANCE BECAUSE THE COMMISSION'S SECTION 252(i) REGULATIONS HAVE BEEN STAYED.

Ameritech's Section 271 application is grounded on the assumption that it can "mix-and-match" different Track A agreements in demonstrating checklist compliance. Stated differently, Ameritech assumes it can use the Brooks Fiber agreement, for example, to demonstrate one element of checklist compliance, and then turn to the TCG agreement to demonstrate another checklist element. Ameritech assumes no single agreement must demonstrate checklist compliance on each and every item,

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[8] Mr. Mayer's affidavit simply repeats Ameritech's plea bargain proposal of November 27th (but his affidavit dated December 27th does not confirm that the 70% conversion has been completed; he asserts only that 50% was done by December 2, 1996, and "an additional 20 percent of [Ameritech's] access lines coincident with this filing ..." (¶ 274)).

only that all the items must be found in at least one agreement (this is in addition to Ameritech's claim, discussed supra in Part I, that it can substitute an "available on order" provision for actual Track A "implementation").

ALTS would agree with Ameritech's "mix-and-match" theory if the Commission's regulations implementing Section 252(i) of the 1996 Act were in effect. The Commission's Section 252(i) regulations guarantee that any carrier can order any particular items from state approved interconnection agreements, including checklist items, on the same terms and conditions. The policy protected by Section 252(i) is critically important, particularly in the Section 271 application process. Unfortunately, the Eighth Circuit has stayed the effectiveness of the Commission's regulations.[9]

If RBOCs are not bound by the Commission's Section 252(i) regulations, they could devise unique interconnection agreements that lack any practical usefulness, because of their packaging, to any competitor except the signatory. Absent effective implementation of Section 252(i), the RBOCs could then use such agreements to show checklist compliance under a "mix-and-match"

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[9] The stay of the Commission's Section 252(i) regulations effectively disposes of Ameritech's claim that the AT&T agreement functions much like an SGAT (event assuming solely for the sake of argument that Ameritech could use a SGAT in lieu of actual Track A compliance; see Part I supra). A Statement of Generally Available Terms necessarily makes individual terms available. The stay of the Section 252(i) regulations brings into question whether individual terms of the AT&T agreement can actually be ordered.

approach, even though other competitors would lack effective access to the particular checklist items involved.

Without acknowledging this problem, Ameritech tries to offer a remedy by including "most favored nation" provisions in its existing agreements. These clauses permit the signatories to request any terms from other state-approved agreements (Brief at 21-22). But Ameritech never promises to offer the same protection to future interconnectors.

Ameritech's willingness to protect some competitors, but not all, is a lethal admission. The irony is that Ameritech trumpets what it perceives as a cartel in long distance as a reason why its application should be granted, yet it apparently has no compunctions about conferring special protections on a limited number of local competitors.

Ameritech should be required to first offer adequate assurances that it will voluntarily comply with the Commission's Section 252(i) regulations before it is allowed to employ a "mix-and-match" approach to checklist compliance.

V. AMERITECH CLAIMS THE UNBUNDLED LOOPS IT PROVIDES TO COMPETITORS SHOULD BE TREATED AS THE COMPETITORS "OWN FACILITIES" UNDER TRACK A.

Track A requires that interconnection agreements must be entered with competing providers of telephone exchange service that are using predominantly their "own" facilities. This language means either that a new entrant must use facilities that

it owns and operates, or else be using facilities obtained from a carrier other than the BOC (see Section 271(c)(1)(A)'s reference to "another carrier").

The logic behind this language is simple and indisputable. If a new entrant were using the incumbent's facilities, it would remain dependent on the BOC for provisioning, maintenance, and pricing of existing elements, or in the development of new network elements. Just as the bottleneck local facilities of the Bell System had to be divested from its long distance operations by the MFJ, the incumbent BOC's network, however provisioned to the new entrant, remains the bottleneck through which all traffic must flow.

This compelling language and logic is entirely ignored by Ameritech, which argues that all RBOC facilities, other that those obtained via resale, should be treated as the competitor's "own" facilities (Brief at 12, citing the Conference Report). The Conference Report fails to support Ameritech's citation because it uses cable competitors -- competitors which have their own end user access facilities -- as the model of facilities-based competitors (Conf. Rep. No. 104-458, 104th Cong., 2d Sess. 148 (1996)). If, as Ameritech contends, the unbundled loops provided by Ameritech should also be treated as a competitor's "own," there would be no reason for the focus on cable competitors in the Conference Report.

Ameritech distorts the term "their own telephone exchange

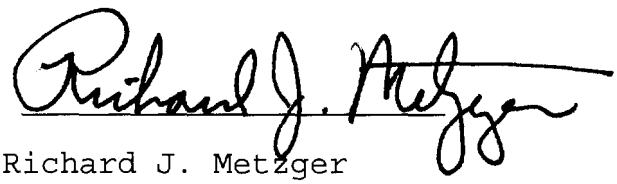
service facilities" as used in Track A by emphasizing the immediately following phrase "in combination with the resale of the telecommunications services of another carrier" (Brief at 12). But this is unsupported by the language of subparagraph (c)(1)(A) read as a whole. The first sentence provides that when an RBOC provides access, "the Bell Operating Company is providing access . . to its network facilities . . ." (emphasis supplied). Thus, the network facilities to which a new entrant obtains access are the RBOC's, and not the new entrant's "own", inasmuch the "access to" a BOC's network facilities received by a new entrant for its "own" network facilities could not be the same RBOC facilities the entrant gains via unbundled access.

Ameritech's unfounded and illogical insistence that the unbundled loops and other network elements it provides be treated as a new entrant's "own" facilities thus requires that its present application be dismissed.

CONCLUSION

For the foregoing reasons, ALTS requests that the Commission enter an order dismissing Ameritech's Section 271 application for Michigan.

Respectfully submitted,

By: 

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